

EXHIBIT 150

SD Department of Social Services (Larry Iversen)

December 15, 2008

Pierre, SD

Page 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS

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THIS DOCUMENT RELATES TO:) Hon. Patti B.

United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Abbott Laboratories, Inc.)
Civil Action No. 06-11337-PBS;) TRANSCRIPT OF
United States of America ex rel.) PROCEEDINGS
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil) DEPOSITION OF
Action No. 05-11084-PBS; and) THE SOUTH DAKOTA
United States of America ex rel.) DEPARTMENT OF
Ven-A-Care of the Florida Keys,) SOCIAL SERVICES
Inc. v. Boehringer Ingelheim) by LARRY IVERSEN
Corp., et al., Civil Action No.)
07-10248-PBS) DECEMBER 15, 2008

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Page 2	Page 4
1 VIDEOTAPE DEPOSITION OF THE SOUTH DAKOTA	1 A P P E A R A N C E S (CONTINUED)
2 DEPARTMENT OF SOCIAL SERVICES by LARRY IVERSEN	2
3	3 Appearing as Local Counsel for Ms. Khandhar and
4	4 Ms. Ramsey:
5 BEFORE: Carla A. Bachand, RMR, CRR	5 MICHAEL J. SCHAFFER, ESQ.
6 Court Reporter and Notary Public	6 SCHAFFER LAW OFFICE
7 Pierre, South Dakota	7 412 West 9th St., #1
8 DATE: December 15, 2008, at 8:15 a.m.	8 Sioux Falls, SD 57104
9 PLACE: Kings Inn Convention Center	9
10 110 East Sioux Avenue	10 Appearing on behalf of the Department:
11 Pierre, South Dakota	11 DANIEL J. TODD, ESQ.
12	12 SOUTHERN DAKOTA DEPARTMENT OF SOCIAL SERVICES
13	13 Legal Counsel, 700 Governor's Drive
14	14 Pierre, South Dakota 57501
15	15
16	16
17	17 Also Present: Videographer Torre Kavanaugh
18	18
19	19
20	20
21	21
22	22
Page 3	Page 5
1 A P P E A R A N C E S	1 I N D E X
2	2
3 Appearing on behalf of Dey:	3 WITNESS: LARRY IVERSEN PAGE
4 LISA KHANDHAR, ESQ.	4 Examination by Ms. Khandhar..... 011, 169
5 KELLEY DRYE & WARREN	5 Examination by Ms. Ramsey..... 120, 170
6 101 Park Avenue	6 Examination by Ms. Acton..... 148
7 New York, New York 10178-0002	7
8	8
9 Appearing on behalf of Abbott:	9 D E Y E X H I B I T S
10 HILARY A. RAMSEY, ESQ.	10 NUMBER DESCRIPTION PAGE
11 JONES DAY	11 Exhibit Dey 904 - Notice of Deposition..... 016
12 51 Louisiana Ave. NW	12 Exhibit Dey 905 - South Dakota Medical
13 Washington, D.C. 20001-2113,	13 Assistance Program Pharmacy
14	14 Manual..... 045
15 Appearing on behalf of the United States:	15 Exhibit Dey 906 - Form..... 049
16 JUNE C. ACTON, ESQ.	16 Exhibit Dey 907 - Affadavit and Certificate.... 064
17 UNITED STATES ATTORNEY'S OFFICE	17 Exhibit Dey 908 - HHC014-1560 - 1563..... 072
18 Assistant United States Attorney	18 Exhibit Dey 909 - HHC014-1518 - 1526..... 076
19 99 NE Fourth Street, 3rd Floor	19 Exhibit Dey 910 - HHD127-0418 - 0424..... 082
20 Miami, Florida 33132	20 Exhibit Dey 911 - South Dakota Department of
21	21 Social Services Consultant
22 (CONTINUED)	22 Contract..... 085

2 (Pages 2 to 5)

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			Page 6	Page 8
1	DEY EXHIBITS (CONTINUED)			
2	NUMBER	DESCRIPTION	PAGE	
3	Exhibit Dey 912 - AWP-IL-0010038 - 0042.....	102		
4				
5				
6	A B B O T T	E X H I B I T S		
7	NUMBER	DESCRIPTION	PAGE	
8	Exhibit Abbott-SD 001 - Cross-notice.....	129		
9	Exhibit Abbott-SD 002 - HHD006-0335 - 0340.....	143		
10				
11				
12	G O V E R N M E N T	E X H I B I T S		
13	NUMBER	DESCRIPTION	PAGE	
14	Exhibit Government 001 - Federal Register,			
15	Vol. 52, No. 147.....	161		
16	Exhibit Government 002 - HHD038-0253.....	153		
17	Exhibit Government 003 - HHD038-0422.....	154		
18	Exhibit Government 004 - HHC014-1523.....	155		
19	Exhibit Government 005 - HHC014-1555.....	155		
20				
21				
22				
			Page 7	Page 9
1	MONDAY, DECEMBER 15, 2008			
2				
3	VIDEOGRAPHER: Today is the 15th of			
4	December 2008. The time is approximately 8:15			
5	a.m. The location is the Kings Inn Hotel and			
6	Conference Center, 110 East Sioux Avenue, Pierre,			
7	South Dakota 57501. My name is Torre Kavanaugh,			
8	certified court video specialist, representing			
9	Henderson Legal Services. This is case number			
10	AWP-MDO entitled Ven-A-Care of the Florida Keys,			
11	Incorporated, et al., versus Dey, Incorporated,			
12	et al., and the deponent is Larry Iversen.			
13	Counsel and all present will please identify			
14	themselves for the record.			
15	MS. KHANDHAR: This is Lisa Khandhar			
16	from Kelley, Drye and Warren and I'm representing			
17	the Dey defendants.			
18	MS. ACTON: This is June Acton and I'm			
19	representing the United States.			
20	MR. TODD: I'm Dan Todd, I am			
21	representing the State of South Dakota Department			
22	of Social Services.			

3 (Pages 6 to 9)

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Pierre, SD

Page 98	Page 100
<p>1 Q. What's your understanding of what 2 "actual cost" means here?</p> <p>3 A. I would assume that is the actual cost 4 to the pharmacy.</p> <p>5 Q. Can you please turn to page three. And 6 if you could look at the paragraph under the 7 heading "frequency of MAC updates," in the middle 8 of the paragraph it states, "SXC completes a 9 review of the acquisition cost and the MAC price 10 for every product on the MAC list," correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if South Dakota Medicaid 13 has access to this review of actual acquisition 14 cost?</p> <p>15 A. No, we do not have access to that.</p> <p>16 Q. Would South Dakota Medicaid be able to 17 have access to this list if it requested access?</p> <p>18 A. I don't know that.</p> <p>19 Q. If you turn to page two, if you turn 20 back one page to the section with the heading 21 "methodology," are you familiar at all with the 22 methodology used by SXC to determine MAC pricing?</p>	<p>1 dispense generic products as well as to make 2 recommendations to prescribers that they 3 substitute brand products with generic therapy 4 alternatives." As we established earlier, 5 providing the provider with a profit was an 6 important concern to South Dakota Medicaid, 7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And in fact this concern directly 10 informed the reimbursement level on MAC prices, 11 according to this sentence that I just read out 12 loud, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Would you agree that SXC has a lot of 15 leeway here in determining what the MAC prices 16 are?</p> <p>17 A. I don't -- I guess that would be an 18 opinion that I haven't necessarily thought about, 19 no.</p> <p>20 Q. What would be your opinion, thinking 21 about it now?</p> <p>22 A. You know, I don't know enough about</p>
Page 99	Page 101
<p>1 A. No.</p> <p>2 Q. If you look at the first bullet point, 3 it states, "First, the final selection of drug 4 products is made. Acquisition prices are 5 obtained from wholesalers, retailers, and the 6 Medispan drug file." Do you know if these 7 acquisition prices are prices that South Dakota 8 Medicaid also has access to?</p> <p>9 A. I would believe that we do not have 10 access to those prices.</p> <p>11 Q. And why do you believe that?</p> <p>12 A. Because I'm not aware of any file or 13 any sort of list that we have that includes 14 acquisition prices.</p> <p>15 Q. If you look at the second bullet point 16 at the third sentence, it states, "The MAC price 17 is then applied across all package sizes 18 available, but is structured to insure that the 19 profit to the pharmacist to dispense the generic 20 product is higher than that associated with 21 dispensing the brand product. This strategy 22 provides pharmacists with an incentive to</p>	<p>1 their pricing methodology, other than what's 2 described here, to really formulate an opinion.</p> <p>3 Q. And do providers still receive a 4 dispensing fee if reimbursement is made based on 5 MACs in South Dakota?</p> <p>6 A. Yes.</p> <p>7 Q. If we look again at the last sentence I 8 read, it states, "This strategy provides 9 pharmacists with an incentive to dispense generic 10 products as well as to make recommendations to 11 prescribers that they substitute brand products 12 with generic therapy alternatives," and as you 13 testified earlier, it was important to South 14 Dakota Medicaid to incentivize providers to use 15 generic drugs, correct?</p> <p>16 A. It's important for providers to 17 dispense generic drugs.</p> <p>18 Q. And this was because it would result in 19 greater savings for South Dakota Medicaid, 20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. In your -- strike that. Would you</p>

Pierre, SD

Page 122	Page 124
<p>1 Q. Can you describe for me the documents 2 that she did show you?</p> <p>3 A. Boy, I just don't recall exactly what 4 they were. There may have been some state plan 5 documents.</p> <p>6 Q. What else?</p> <p>7 A. That's all I recall.</p> <p>8 Q. Did she show you any legal documents 9 such as deposition transcripts?</p> <p>10 A. No.</p> <p>11 Q. Did she show you any other type of 12 legal documents?</p> <p>13 A. No.</p> <p>14 Q. Did the United States Attorney provide 15 an overview on the legal theories of the case?</p> <p>16 A. No.</p> <p>17 Q. Did the United States Attorney provide 18 any indication of the United States's claims in 19 this action?</p> <p>20 A. No.</p> <p>21 Q. Besides this meeting that you referred 22 to last Thursday, have you had any other</p>	<p>1 Q. Any other way?</p> <p>2 A. No.</p> <p>3 Q. When did you first become aware of the 4 United States lawsuit against Abbott, Dey, and 5 Roxane?</p> <p>6 A. When we received the subpoena.</p> <p>7 Q. Did South Dakota ever receive 8 notification from CMS or the Department of 9 Justice indicating that it should retain 10 documents relating to AWP or drug pricing?</p> <p>11 A. To the best of my knowledge, no.</p> <p>12 Q. Have you ever personally been advised 13 to retain documents relating to South Dakota's 14 Medicaid reimbursement system or its knowledge 15 about published AWPs?</p> <p>16 A. No.</p> <p>17 Q. When South Dakota established its 18 definition of estimated acquisition cost as AWP 19 minus 10.5 percent, how was the figure of 10.5 20 percent determined?</p> <p>21 A. I don't know that, that was before my 22 time with the department.</p>
<p>1 discussions with attorneys from the United States 2 Department of Justice or CMS regarding drug 3 pricing litigation?</p> <p>4 A. No.</p> <p>5 Q. Is there anything else which you recall 6 the United States Attorney telling you that I 7 have not asked about?</p> <p>8 A. No.</p> <p>9 Q. Approximately how long did you meet?</p> <p>10 A. Oh, somewhere between an hour and hour 11 and a half.</p> <p>12 Q. Have you ever reviewed any complaints 13 related to the matter for which we are here 14 today?</p> <p>15 A. No.</p> <p>16 Q. Do you have an understanding about the 17 nature of the lawsuit?</p> <p>18 A. A very basic understanding.</p> <p>19 Q. And how did you come to that 20 understanding?</p> <p>21 A. Simply by reading the subpoena that we 22 had received.</p>	<p>1 Q. In preparation for your deposition 2 today, were you educated as to how this figure 3 was set?</p> <p>4 A. No.</p> <p>5 Q. Do you have any insight as to how that 6 figure was determined?</p> <p>7 A. I don't.</p> <p>8 Q. Do you know when the 10.5 percent 9 discount was first applied in the South Dakota 10 Medicaid reimbursement formula?</p> <p>11 A. I don't know specifically, but it's 12 been 10 and a half percent for as long as I can 13 recall.</p> <p>14 Q. And you began work with the department 15 around 1995; is that correct?</p> <p>16 A. Approximately 13 years.</p> <p>17 Q. I'm sorry, I didn't hear your answer, 18 sir.</p> <p>19 A. Yes, approximately 13 years.</p> <p>20 Q. And similarly, I believe you previously 21 testified that the dispensing fee has remained at 22 the \$4.25 level since you began with the</p>

Pierre, SD

Page 126	Page 128
<p>1 department around 1995.</p> <p>2 A. I think it's 4.75.</p> <p>3 Q. I'm sorry, I misspoke. 4.75 --</p> <p>4 A. Yes.</p> <p>5 Q. -- has remained the dispensing fee</p> <p>6 level since at least as early as 1995; is that</p> <p>7 correct?</p> <p>8 A. There may have been a change in there</p> <p>9 at some point, I don't recall. I can recall it's</p> <p>10 been 4.75 for a number of years.</p> <p>11 Q. How was the \$4.75 level selected for</p> <p>12 the South Dakota dispensing fee?</p> <p>13 A. I don't know that.</p> <p>14 Q. As part of your preparation for today's</p> <p>15 deposition, were you educated at all regarding</p> <p>16 South Dakota's knowledge about the adequacy or</p> <p>17 inadequacy of its dispensing fee rate?</p> <p>18 A. No.</p> <p>19 Q. Are you familiar with the term</p> <p>20 nontraditional pharmacies?</p> <p>21 A. No.</p> <p>22 Q. Have you ever heard of home IV</p>	<p>1 may not be aware of them?</p> <p>2 A. Other examples other than nursing</p> <p>3 facilities?</p> <p>4 Q. Yes.</p> <p>5 A. That's the limit of my experience and</p> <p>6 knowledge with them.</p> <p>7 Q. If South Dakota -- if South Dakota's</p> <p>8 Medicaid office was going to make a change to its</p> <p>9 reimbursement methodology, does the agency have</p> <p>10 authority to do so or must any change to the</p> <p>11 reimbursement formula go through the legislature?</p> <p>12 A. Changes in administrative rule are</p> <p>13 required to go through an interim rules committee</p> <p>14 that is made up of legislative members.</p> <p>15 Q. I'll give an example and maybe you can</p> <p>16 walk me through this. If South Dakota wanted to</p> <p>17 increase its dispensing fee, how would it go</p> <p>18 about doing so?</p> <p>19 A. If we wanted to increase our dispensing</p> <p>20 fee, first we would look to see if a state plan</p> <p>21 amendment needed to be made and then we would go</p> <p>22 through the process that I previously described.</p>
<p style="text-align: center;">Page 127</p> <p>1 pharmacies?</p> <p>2 A. Could you repeat that?</p> <p>3 Q. Yes. Have you ever heard of home IV</p> <p>4 pharmacies?</p> <p>5 A. No.</p> <p>6 Q. We discussed earlier some references to</p> <p>7 closed pharmacies; do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. What is your understanding of a closed</p> <p>10 pharmacy?</p> <p>11 A. My understanding of a closed pharmacy</p> <p>12 is it's a pharmacy that provides prescription</p> <p>13 drugs to individuals in nursing facilities. They</p> <p>14 don't necessarily have a store front where they</p> <p>15 dispense drugs to someone walking in through the</p> <p>16 door.</p> <p>17 Q. Are you aware of any other types of</p> <p>18 examples besides nursing home pharmacies for</p> <p>19 closed pharmacies?</p> <p>20 A. No.</p> <p>21 Q. Is it fair to say that you have no</p> <p>22 reason to disbelieve that these exist, you just</p>	<p>1 If a rules change were to be required, then I</p> <p>2 would also then say we would have to go through</p> <p>3 the process that I previously described, that</p> <p>4 includes meeting in front of the legislative</p> <p>5 interim rules committee.</p> <p>6 Q. From 1991 through 2003, did South</p> <p>7 Dakota take any efforts to increase its</p> <p>8 dispensing fee?</p> <p>9 A. I don't immediately recall any actions</p> <p>10 to change the dispensing fee.</p> <p>11 MS. RAMSEY: Lisa, if I could please</p> <p>12 ask you to hand the court reporter the cross-</p> <p>13 notice.</p> <p>14 MS. KHANDHAR: Sure.</p> <p>15 MS. RAMSEY: I ask this please be</p> <p>16 marked as Abbott South Dakota 1.</p> <p>17 (Deposition Exhibit Abbott-SD 001</p> <p>18 marked for identification.)</p> <p>19 Q. (BY MS. RAMSEY) Mr. Iversen, do you</p> <p>20 have that document in front of you?</p> <p>21 A. Yes, I do.</p> <p>22 Q. If you could please turn to Schedule A,</p>